

FIRST REGULAR SESSION

# SENATE BILL NO. 657

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time March 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2482S.011

## AN ACT

To repeal sections 335.016, 335.066, 335.068, 335.076, 335.097, 383.130, and 383.133, RSMo, and to enact in lieu thereof seven new sections relating to professional licensing of nurses.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 335.016, 335.066, 335.068, 335.076, 335.097, 383.130, 2 and 383.133, RSMo, are repealed and seven new sections enacted in lieu thereof, 3 to be known as sections 335.016, 335.066, 335.068, 335.076, 335.097, 383.130, and 4 383.133, to read as follows:

335.016. As used in this chapter, unless the context clearly requires 2 otherwise, the following words and terms mean:

3 (1) "Accredited", the official authorization or status granted by an agency 4 for a program through a voluntary process;

5 (2) "Advanced practice nurse", a nurse who has had education beyond the 6 basic nursing education and is certified by a nationally recognized professional 7 organization as having a nursing specialty, or who meets criteria for advanced 8 practice nurses established by the board of nursing. The board of nursing may 9 promulgate rules specifying which professional nursing organization certifications 10 are to be recognized as advanced practice nurses, and may set standards for 11 education, training and experience required for those without such specialty 12 certification to become advanced practice nurses. Advanced practice nurses and 13 only such individuals may use the title "Advanced Practice Registered Nurse" and 14 the abbreviation "APRN";

15 (3) "Approval", official recognition of nursing education programs which 16 meet standards established by the board of nursing;

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 (4) "Board" or "state board", the state board of nursing;

18 (5) "Executive director", a qualified individual employed by the board as  
19 executive secretary or otherwise to administer the provisions of this chapter  
20 under the board's direction. Such person employed as executive director shall not  
21 be a member of the board;

22 (6) "Inactive nurse", as defined by rule pursuant to section 335.061;

23 (7) **"Lapsed license status", as defined by rule under section**  
24 **335.061;**

25 (8) [A] "Licensed practical nurse" or "practical nurse", a person licensed  
26 pursuant to the provisions of this chapter to engage in the practice of practical  
27 nursing;

28 [(8)] (9) "Licensure", the issuing of a license to practice professional or  
29 practical nursing to candidates who have met the specified requirements and the  
30 recording of the names of those persons as holders of a license to practice  
31 professional or practical nursing;

32 [(9)] (10) "Practical nursing", the performance for compensation of  
33 selected acts for the promotion of health and in the care of persons who are ill,  
34 injured, or experiencing alterations in normal health processes. Such  
35 performance requires substantial specialized skill, judgment and knowledge. All  
36 such nursing care shall be given under the direction of a person licensed by a  
37 state regulatory board to prescribe medications and treatments or under the  
38 direction of a registered professional nurse. For the purposes of this chapter, the  
39 term "direction" shall mean guidance or supervision provided by a person licensed  
40 by a state regulatory board to prescribe medications and treatments or a  
41 registered professional nurse, including, but not limited to, oral, written, or  
42 otherwise communicated orders or directives for patient care. When practical  
43 nursing care is delivered pursuant to the direction of a person licensed by a state  
44 regulatory board to prescribe medications and treatments or under the direction  
45 of a registered professional nurse, such care may be delivered by a licensed  
46 practical nurse without direct physical oversight;

47 [(10)] (11) "Professional nursing", the performance for compensation of  
48 any act which requires substantial specialized education, judgment and skill  
49 based on knowledge and application of principles derived from the biological,  
50 physical, social and nursing sciences, including, but not limited to:

51 (a) Responsibility for the teaching of health care and the prevention of  
52 illness to the patient and his or her family;

53 (b) Assessment, nursing diagnosis, nursing care, and counsel of persons

54 who are ill, injured or experiencing alterations in normal health processes;

55 (c) The administration of medications and treatments as prescribed by a  
56 person licensed by a state regulatory board to prescribe medications and  
57 treatments;

58 (d) The coordination and assistance in the delivery of a plan of health care  
59 with all members of a health team;

60 (e) The teaching and supervision of other persons in the performance of  
61 any of the foregoing;

62 [(11)] (12) A "registered professional nurse" or "registered nurse", a  
63 person licensed pursuant to the provisions of this chapter to engage in the  
64 practice of professional nursing;

65 (13) "Retired license status", any person licensed in this state  
66 under this chapter who retires from such practice. Such person shall  
67 file with the board an affidavit, on a form to be furnished by the board,  
68 which states the date on which the licensee retired from such practice,  
69 an intent to retire from the practice for at least two years, and such  
70 other facts as tend to verify the retirement as the board may deem  
71 necessary; but if the licensee thereafter reengages in the practice, the  
72 licensee shall renew his or her license with the board as provided by  
73 this chapter and by rule and regulation.

335.066. 1. The board may refuse to issue any certificate of registration  
2 or authority, permit or license required pursuant to sections 335.011 to 335.096  
3 for one or any combination of causes stated in subsection 2 of this section. The  
4 board shall notify the applicant in writing of the reasons for the refusal and shall  
5 advise the applicant of his or her right to file a complaint with the administrative  
6 hearing commission as provided by chapter 621, RSMo.

7 2. The board may cause a complaint to be filed with the administrative  
8 hearing commission as provided by chapter 621, RSMo, against any holder of any  
9 certificate of registration or authority, permit or license required by sections  
10 335.011 to 335.096 or any person who has failed to renew or has surrendered his  
11 or her certificate of registration or authority, permit or license for any one or any  
12 combination of the following causes:

13 (1) Use or unlawful possession of any controlled substance, as defined in  
14 chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a  
15 person's ability to perform the work of any profession licensed or regulated by  
16 sections 335.011 to 335.096;

17 (2) The person has been finally adjudicated and found guilty, or entered

18 a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws  
19 of any state or of the United States, for any offense reasonably related to the  
20 qualifications, functions or duties of any profession licensed or regulated  
21 pursuant to sections 335.011 to 335.096, for any offense an essential element of  
22 which is fraud, dishonesty or an act of violence, or for any offense involving moral  
23 turpitude, whether or not sentence is imposed;

24 (3) Use of fraud, deception, misrepresentation or bribery in securing any  
25 certificate of registration or authority, permit or license issued pursuant to  
26 sections 335.011 to 335.096 or in obtaining permission to take any examination  
27 given or required pursuant to sections 335.011 to 335.096;

28 (4) Obtaining or attempting to obtain any fee, charge, tuition or other  
29 compensation by fraud, deception or misrepresentation;

30 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation  
31 or dishonesty in the performance of the functions or duties of any profession  
32 licensed or regulated by sections 335.011 to 335.096;

33 (6) Violation of, or assisting or enabling any person to violate, any  
34 provision of sections 335.011 to 335.096, or of any lawful rule or regulation  
35 adopted pursuant to sections 335.011 to 335.096;

36 (7) Impersonation of any person holding a certificate of registration or  
37 authority, permit or license or allowing any person to use his or her certificate of  
38 registration or authority, permit, license or diploma from any school;

39 (8) Disciplinary action against the holder of a license or other right to  
40 practice any profession regulated by sections 335.011 to 335.096 granted by  
41 another state, territory, federal agency or country upon grounds for which  
42 revocation or suspension is authorized in this state;

43 (9) A person is finally adjudged insane or incompetent by a court of  
44 competent jurisdiction;

45 (10) Assisting or enabling any person to practice or offer to practice any  
46 profession licensed or regulated by sections 335.011 to 335.096 who is not  
47 registered and currently eligible to practice pursuant to sections 335.011 to  
48 335.096;

49 (11) Issuance of a certificate of registration or authority, permit or license  
50 based upon a material mistake of fact;

51 (12) Violation of any professional trust or confidence;

52 (13) Use of any advertisement or solicitation which is false, misleading or  
53 deceptive to the general public or persons to whom the advertisement or  
54 solicitation is primarily directed;

55 (14) Violation of the drug laws or rules and regulations of this state, any  
56 other state or the federal government;

57 (15) Placement on an employee disqualification list or other related  
58 restriction or finding pertaining to employment within a health-related profession  
59 issued by any state or federal government or agency following final disposition by  
60 such state or federal government or agency.

61 3. After the filing of such complaint, the proceedings shall be conducted  
62 in accordance with the provisions of chapter 621, RSMo. Upon a finding by the  
63 administrative hearing commission that the grounds, provided in subsection 2 of  
64 this section, for disciplinary action are met, the board may, singly or in  
65 combination, censure or place the person named in the complaint on probation on  
66 such terms and conditions as the board deems appropriate for a period not to  
67 exceed five years, or may suspend, for a period not to exceed three years, or  
68 revoke the license, certificate, or permit.

69 4. **For any hearing before the full board, the board shall cause**  
70 **the notice of the hearing to be served upon such licensee in person or**  
71 **by certified mail to the licensee at the licensee's last known address. If**  
72 **service cannot be accomplished in person or by certified mail, notice**  
73 **by publication as described in subsection 3 of section 506.160, RSMo,**  
74 **shall be allowed; any representative of the board is authorized to act**  
75 **as a court or judge would in that section; any employee of the board is**  
76 **authorized to act as a clerk would in that section.**

77 5. An individual whose license has been revoked shall wait one year from  
78 the date of revocation to apply for relicensure. Relicensure shall be at the  
79 discretion of the board after compliance with all the requirements of sections  
80 335.011 to 335.096 relative to the licensing of an applicant for the first time.

81 [5.] 6. The board may notify the proper licensing authority of any other  
82 state concerning the final disciplinary action determined by the board on a license  
83 in which the person whose license was suspended or revoked was also licensed of  
84 the suspension or revocation.

85 [6.] 7. Any person, organization, association or corporation who reports  
86 or provides information to the board of nursing pursuant to the provisions of  
87 sections 335.011 to 335.259 and who does so in good faith shall not be subject to  
88 an action for civil damages as a result thereof.

89 8. **If the board concludes that a nurse has committed an act or**  
90 **is engaging in a course of conduct which would be grounds for**  
91 **disciplinary action which constitutes a clear and present danger to the**

92 public health and safety, the board may file a complaint before the  
93 administrative hearing commission requesting an expedited hearing  
94 and specifying the activities which give rise to the danger and the  
95 nature of the proposed restriction or suspension of the nurse's  
96 license. Within fifteen days after service of the complaint on the nurse,  
97 the administrative hearing commission shall conduct a preliminary  
98 hearing to determine whether the alleged activities of the nurse appear  
99 to constitute a clear and present danger to the public health and safety  
100 which justify that the nurse's license be immediately restricted or  
101 suspended. The burden of proving that a nurse is a clear and present  
102 danger to the public health and safety shall be upon the state board of  
103 nursing. The administrative hearing commission shall issue its  
104 decision immediately after the hearing and shall either grant to the  
105 board the authority to suspend or restrict the license or dismiss the  
106 action.

107 9. If the administrative hearing commission grants temporary  
108 authority to the board to restrict or suspend the nurse's license, such  
109 temporary authority of the board shall become final authority if there  
110 is no request by the nurse for a full hearing within thirty days of the  
111 preliminary hearing. The administrative hearing commission shall, if  
112 requested by the nurse named in the complaint, set a date to hold a full  
113 hearing under the provisions of chapter 621, RSMo, regarding the  
114 activities alleged in the initial complaint filed by the board.

115 10. If the administrative hearing commission refuses to grant  
116 temporary authority to the board or restrict or suspend the nurse's  
117 license under subsection 8 of this section, such dismissal shall not bar  
118 the board from initiating a subsequent disciplinary action on the same  
119 grounds.

335.068. 1. [If the board finds merit to a complaint by an individual  
2 incarcerated or under the care and control of the department of corrections and  
3 takes further investigative action, no documentation may appear on file or  
4 disciplinary action may be taken in regards to the licensee's license unless the  
5 provisions of subsection 2 of section 335.066 have been violated. Any case file  
6 documentation that does not result in the board filing an action pursuant to  
7 subsection 2 of section 335.066 shall be destroyed within three months after the  
8 final case disposition by the board. No notification to any other licensing board  
9 in another state or any national registry regarding any investigative action shall

10 be made unless the provisions of subsection 2 of section 335.066 have been  
11 violated.

12         2. Upon written request of the nurse subject to a complaint, prior to  
13 August 28, 1999, by an individual incarcerated or under the care and control of  
14 the department of corrections that did not result in the board filing an action  
15 pursuant to subsection 2 of section 335.066, the board and the division of  
16 professional registration shall in a timely fashion:

17             (1) Destroy all documentation regarding the complaint;] **If the board**  
18 **determines that a complaint does not constitute a violation of the**  
19 **nursing practice act or that the complaint is unsubstantiated, then that**  
20 **complaint, and all documentation related to it, shall be deemed a sealed**  
21 **record. If the administrative hearing commission or a court of**  
22 **competent jurisdiction makes a finding that an action brought by the**  
23 **board does not constitute sufficient grounds to discipline the license of**  
24 **a licensee, that complaint, and all documentation related to it, shall be**  
25 **deemed a sealed record.**

26             2. **For purposes of this section, a "sealed record" shall mean that**  
27 **the complaint to which it refers shall be deemed to never have**  
28 **occurred. The licensee may properly reply that no record exists with**  
29 **respect to such complaint upon any inquiry in the matter. A sealed**  
30 **record shall not be disclosed or reported to any other state agency,**  
31 **other board of nursing, or any other organization without express,**  
32 **written permission of the licensee.**

33             3. **Upon determination by the board that a complaint is not a**  
34 **violation of this chapter or that the complaint is unsubstantiated, or**  
35 **upon the conclusion of litigation resulting in a finding of insufficient**  
36 **grounds to impose discipline upon a licensee's license, the board and**  
37 **the division of professional registration shall, in a timely fashion:**

38             [(2)] (1) Notify any other licensing board in another state or any national  
39 registry regarding the board's action if they have been previously notified of the  
40 complaint; and

41             [(3)] (2) Send a letter to the licensee that clearly states that the board  
42 found the complaint to be unsubstantiated[, that the board has taken the  
43 requested action,] **or that litigation resulted in a finding that there are**  
44 **insufficient grounds to discipline the licensee's license, that the board**  
45 **has sealed all records concerning the complaint, and notify the licensee of**  
46 the provisions of subsection [3] 4 of this section.

47 [3.] 4. Any person who has been the subject of an unsubstantiated  
48 complaint as provided in subsection 1 [or 2] of this section shall not be required  
49 to disclose the existence of such complaint in subsequent applications or  
50 representations relating to their nursing professions.

51 **5. Nothing contained in this section shall prevent the board of**  
52 **nursing from maintaining such records as to ensure that all complaints**  
53 **received by the board are properly investigated and reviewed by the**  
54 **board and the results of that investigation are reported to the**  
55 **appropriate parties.**

335.076. 1. Any person who holds a license to practice professional  
2 nursing in this state may use the title "Registered Professional Nurse" and the  
3 abbreviation "R.N.". No other person [may] **shall** use the title "Registered  
4 Professional Nurse" or the abbreviation "R.N.". No other person shall assume any  
5 title or use any abbreviation or any other words, letters, signs, or devices to  
6 indicate that the person using the same is a registered professional nurse.

7 2. Any person who holds a license to practice practical nursing in this  
8 state may use the title "Licensed Practical Nurse" and the abbreviation "L.P.N."  
9 No other person [may] **shall** use the title "Licensed Practical Nurse" or the  
10 abbreviation "L.P.N.". No other person shall assume any title or use any  
11 abbreviation or any other words, letters, signs, or devices to indicate that the  
12 person using the same is a licensed practical nurse.

13 **3. Any person who holds a license or recognition to practice**  
14 **advanced practice nursing in this state may use the title "Advanced**  
15 **Practice Registered Nurse", and the abbreviation "APRN", and any other**  
16 **title designations appearing on his or her license. No other person**  
17 **shall use the title "Advanced Practice Registered Nurse" or the**  
18 **abbreviation "APRN". No other person shall assume any title or use any**  
19 **abbreviation or any other words, letters, signs, or devices to indicate**  
20 **that the person using the same is an advanced practice registered**  
21 **nurse.**

22 4. No person shall practice or offer to practice professional nursing [or],  
23 practical nursing, **or advanced practice nursing** in this state [for  
24 compensation] or use any title, sign, abbreviation, card, or device to indicate that  
25 such person is a practicing professional nurse [or], practical nurse, **or advanced**  
26 **practice nurse** unless he **or she** has been duly licensed under the provisions  
27 of [sections 335.011 to 335.096] **this chapter.**

28 **5. In the interest of public safety and consumer awareness, it is**

29 **unlawful for any person to use the title "nurse" in reference to himself**  
30 **or herself in any capacity, except individuals who are or have been**  
31 **licensed as a registered nurse, licensed practical nurse, or advanced**  
32 **practice registered nurse under this chapter.**

335.097. 1. The president or secretary of the board of nursing may  
2 administer oaths, issue subpoenas duces tecum and require production of  
3 documents and records. Subpoenas duces tecum shall be served by a person  
4 authorized to serve subpoenas of courts of record. In lieu of requiring attendance  
5 of a person to produce original documents in response to a subpoena duces tecum,  
6 the board may require sworn copies of such documents to be filed with it or  
7 delivered to its designated representative.

8 2. The board may enforce its subpoenas duces tecum by applying to a  
9 circuit court of Cole County, the county of the investigation, hearing or  
10 proceeding, or any county where the person resides or may be found, for an order  
11 upon any person who shall fail to comply with a subpoena duces tecum to show  
12 cause why such subpoena should not be enforced, which such order and a copy of  
13 the application therefor shall be served upon the person in the same manner as  
14 a summons in a civil action, and if the circuit court shall, after a hearing,  
15 determine that the subpoena duces tecum should be sustained and enforced, such  
16 court shall proceed to enforce the subpoena duces tecum in the same manner as  
17 though the subpoena duces tecum had been issued in a civil case in the circuit  
18 court.

19 **3. Reports made to the board under the mandated reporting**  
20 **requirements as defined in chapter 383, RSMo, shall not be deemed a**  
21 **violation of the federal health insurance portability and accountability**  
22 **act (HIPAA) and the privacy rules located in the act because the**  
23 **Missouri state board of nursing qualifies as a health oversight agency**  
24 **as defined in the HIPAA privacy rules.**

383.130. As used in sections 383.130[,] and 383.133 [and 383.500], the  
2 following terms shall mean:

3 (1) "Disciplinary action", any final action taken by the board of trustees  
4 or similarly empowered officials of a hospital or ambulatory surgical center, **or**  
5 **owner or operator of a temporary nursing staffing agency**, to reprimand,  
6 discipline or restrict the practice of a health care professional. [If the health care  
7 professional is a physician or surgeon,] Only such reprimands, discipline, or  
8 restrictions in response to activities which are also grounds for disciplinary  
9 actions [pursuant to section 334.100, RSMo,] **according to the professional**

10 **licensing law for that health care professional** shall be considered  
11 disciplinary actions for the purposes of this definition[. If the health care  
12 professional is a dentist, only such reprimands, discipline, or restrictions in  
13 response to activities which are also grounds for disciplinary actions pursuant to  
14 section 332.321, RSMo, shall be considered disciplinary actions for the purposes  
15 of this definition];

16 (2) "Health care professional", a physician or surgeon licensed under the  
17 provisions of chapter 334, RSMo, a dentist licensed under the provisions of  
18 chapter 332, RSMo, or a podiatrist licensed under the provisions of chapter 330,  
19 RSMo, or a pharmacist licensed under the provisions of chapter 338, RSMo, a  
20 psychologist licensed under the provisions of chapter 337, RSMo, or a nurse  
21 licensed under the provisions of chapter 335, RSMo, while acting within their  
22 scope of practice;

23 (3) "Hospital", a place devoted primarily to the maintenance and operation  
24 of facilities for the diagnosis, treatment or care for not less than twenty-four  
25 hours in any week of three or more nonrelated individuals suffering from illness,  
26 disease, injury, deformity or other abnormal physical conditions; or a place  
27 devoted primarily to provide for not less than twenty-four hours in any week  
28 medical or nursing care for three or more nonrelated individuals. The term  
29 "hospital" does not include convalescent, nursing, shelter or boarding homes as  
30 defined in chapter 198, RSMo;

31 (4) "Licensing authority", the appropriate board or authority which is  
32 responsible for the licensing or regulation of the health care professional;

33 (5) **"Temporary nursing staffing agency", any person, firm,**  
34 **partnership, or corporation doing business within the state that**  
35 **supplies, on a temporary basis, registered nurses, licensed practical**  
36 **nurses to a hospital, nursing home, or other facility requiring the**  
37 **services of those persons.**

383.133. 1. [Beginning on January 1, 1987,] The chief executive office **or**  
2 **similarly empowered official** of any hospital [or], ambulatory surgical center,  
3 as such [term is] **terms are** defined in [section 197.200] **chapter 197**, RSMo,  
4 **or temporary nursing staffing agency**, shall report to the appropriate health  
5 care professional licensing authority any disciplinary action against any health  
6 care professional or the voluntary resignation of any health care professional  
7 against whom any complaints or reports have been made which might have led  
8 to disciplinary action.

9 2. All reports required by this section shall be submitted within fifteen

10 days of the final disciplinary action and shall contain, but need not be limited to,  
11 the following information:

12 (1) The name, address and telephone number of the person making the  
13 report;

14 (2) The name, address and telephone number of the person who is the  
15 subject of the report;

16 (3) A [brief] description of the facts, **including as much detail and**  
17 **information as possible**, which gave rise to the issuance of the report,  
18 including the dates of occurrence deemed to necessitate the filing of the report;

19 (4) If court action is involved and known to the reporting agent, the  
20 identity of the court, including the date of filing and the docket number of the  
21 action.

22 3. Upon request, the licensing authority may furnish a report of any  
23 disciplinary action received by it under the provisions of this section to any [of  
24 the hospitals or ambulatory surgical centers] **entity** required to report **under**  
25 **this section**. Such licensing authority may also furnish, upon request, a report  
26 of disciplinary action taken by the licensing authority to any other administrative  
27 or law enforcement agency acting within the scope of its statutory authority.

28 4. There shall be no liability on the part of, and no cause of action of any  
29 nature shall arise against any health care professional licensing authority or any  
30 [hospital or ambulatory surgical center] **entity** required to report under this  
31 section, or any of their agents or employees for any action taken in good faith and  
32 without malice in carrying out the provisions of this section.

33 5. Neither a report required to be filed under subsection 2 of this section  
34 nor the record of any proceeding shall be used against a health care professional  
35 in any other administrative or judicial proceeding.

36 6. Violation of any provision of this section is an infraction.

✓